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Land Use Controls, by Frank E. Horack Jr. and Van Nolan Jr.

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BOOK REVIEWS

LAND USE CONTROLS. By Frank E. Horack, Jr. and Val Nolan, Jr. St. Paul: West Publishing Co., 1955. Pp. xvi, 240. \$4.75.

Get this book and read it. Read it whether you are a veteran practitioner or just a neophyte. Read it if you teach law. By all means and without fail read it if you teach the law of property or local government. Don't be deterred by the statement in the preface that this is a book to supplement first year property courses.¹ Most of us are freshmen in dealing with what the authors call the "new and different fees" tailored to the requirements of the community by land use controls.

By neatly interlacing clearly written text with carefully edited case material,² the authors describe the functioning of the land planning process in and around our urban centers through use of the master plan, zoning, subdivision controls, urban redevelopment, urban renewal, and conservation. They give the best analysis of key zoning legal problems in the literature. The recent rash of expensive, multiple-volume works on law of zoning are heavy on case citations and quotations and light on analysis to guide one to an understanding of zoning problems. Professors Horack and Nolan supply a badly needed analytical approach to some of the toughest problems in zoning. In addition they give solid advice to practicing attorneys who represent clients in zoning cases—advice that reflects Professor Horack's long experience as a plan commission member, in which capacity he has had all too frequent opportunity to observe ineptness of courtroom-oriented lawyers. For example, they say:

Many attorneys completely misconceive the proper method by which an amendment to a zoning ordinance should be initiated.

Usually the petition to the plan commission or to the city council requests rezoning of the client's property which is described with particularity. Thus the petition and the public notice on its face is a request for 'spot zoning.' . . . The attorney for the petitioner should include in his petition and public advertisement a land area of at least one block and preferably more, even though his immediate interest is a relatively small portion

1. P. xii.

2. There are about 120 pages of cases to match about an equal number of pages of text, some of which is written by persons other than the authors.

of the area. The fact that the land is owned by persons whom the attorney does not represent is immaterial.³

Other zoning problems covered are: industrial, business, residential, and agricultural uses; accessory uses and home occupations; special uses and special use districts; intensity of land use; nonconforming uses and structures; architectural control and aesthetics; variances and special exceptions and remedies.

As already indicated, there is in addition to the zoning material some treatment of the master plan; subdivision regulation; urban redevelopment, renewal, and conversation. There is also an introductory chapter on "Property Systems: Ideas and Institutions." You may want to postpone reading the latter until after you have digested the land use control materials as such. But be sure to come back to this chapter. Come back to it in the evening in a relaxing chair. Read a couple of pages and mull. Outline what you have read on a convenient pad. Add a few of your own ideas. You will be enjoying one of the most stimulating intellectual exercises you have undertaken in many a full moon. This introductory chapter of 29 pages, printed like the rest of the book on easy to read double column pages, is one of the best broad-ranging summary essays on the institution of property to be found. It is clearly written, quite unclouded by the scholarly pretentiousness that ordinarily befogs such attempts.

Property is looked at as a universal human institution by which the community controls access to the available supply of valuables and the uses that can be made of them. Its central position in society is noted by reference to primitive, ancient western, and modern societies. The role of ideas in helping to adapt and change property institutions is described in terms of Greek, Roman, early Christian, and more recent western history. The impact of feudalism, of the thinking of John Locke and Jeremy Bentham are looked at critically. Social, economic, and political forces that have helped shape property institutions are discussed. The impact of the new world's roominess upon property rules that grew up in cramped old world surroundings and sweeping effects of the American Revolution on property institutions (on primogeniture, for example) are summarized. The chapter is a monument to wide range reading and careful thought.

This is a short book, only 240 pages if you count the index. Of course there are many important land use control problems left out. The authors would be the first to concede this. They do not invade the field

3. P. 57.

of resource conservation, or of nuisance, not even to point up the importance of nuisance case law to zoning administration.⁴ The official map is not covered and other building line controls are not fully developed; the rural zoning material is skimpy and somewhat out of date; tax measures and grants-and-credits-in-aid as land use control tools are not covered; light treatment characterizes that crucial phenomenon of this era of suburban and open country living—the disrespectful sprawl of planning problems across boundary lines of our balkanized units of local government. The authors leave private control through restrictive covenants to other sources.

But the authors did not set out to provide complete coverage of the vast field of land use controls. They are interested in introducing the beginning law student to a few of the most important problems in the field. This is a worthy objective. The question is whether this book of supplementary readings will accomplish it.

In the debate over whether land use controls should be handled in local government or in property law courses, the authors side with the property advocates. “The force of events,” they say, “has thus required the inclusion of land use materials in property courses.”⁵ And the authors would include such materials in first year property courses. But how many first year property teachers are going to accept the challenge of this book? There is enough here for one good fat extra semester-credit of work. “Where will I find the time?” moans the property teacher. “I don’t have time enough now to cover what I should.” Already “watered-down, lick-and-a-promise” introductory property courses which slight “core doctrine” have been soundly castigated.⁶ Listen again to the challenge which the authors have thrown out:

No longer can the property lawyer advise his clients by referring simply to private covenants, doctrines of waste, recording acts, and familiar categories of interests and encumbrances. At every stage he must be fully acquainted with the statutory law of land use. If he is unprepared to cope with this new law of property the lawyer will be in much the same position as his colleague of a few years ago, who was planning estates while unprepared in the field of taxation.⁷

4. See Beuscher, *Judicial Zoning through Nuisance Doctrine*, 1955 WIS. L. REV. 440, 452.

5. P. xi.

6. Professor John C. Payne, Book Review, 34 N. C. L. REV. 159, 164 (1955).

7. P. xi.

Obviously to meet this challenge first year property teachers will either have to omit some of the material now covered in their already truncated courses, or they will have to soft-talk their colleagues on the faculty into letting them add a credit of time to their courses. Incidentally, the soft-talk will be more effective if some of the non-property men on the faculty can first be induced to look into this book.

Other law schools are trying to meet the challenge by including land use control materials in second or third year property courses. A few have set up separate courses or seminars. Not since McDougal and Haber's *Property, Wealth, and Land*⁸ has such an "unduckable" challenge been hurled at first year property teachers.

J. H. BEUSCHER†

THE FEDERAL ANTITRUST POLICY: ORIGINATION OF AN AMERICAN TRADITION. By Hans B. Thorelli.* Baltimore: The Johns Hopkins Press, 1955. Pp. xvi, 658. \$8.00.

A lawyer, accustomed to find books on current legal problems equipped with "pocket parts," to include the very latest word, is somewhat taken aback by a book on antitrust law which straightforwardly and unashamedly stops in 1903. Dr. Hans B. Thorelli's book, *The Federal Antitrust Policy: Origination of an American Tradition* does just this. Yet it may safely be predicted that this book will be recognized as required reading for any serious student of antitrust law and lore.

The book, of course, serves totally different purposes from those which deal with the latest developments in that field;¹ for it serves to constitute a new base of departure from which to analyze those developments. Furthermore, the book does not purport to describe what will or should be the development in the future, unless one may safely extra-

8. 1948.

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* Dr. Thorelli is eminently qualified for the study he has made. A citizen of Sweden born in New Jersey, he holds an LL.B. degree, an M.A. degree (Economics, Political Science and Statistics), a Ph. Lic. in Political Science, and a Ph.D. degree from the University of Stockholm. He has done graduate work in Northwestern University and a significant amount of research in many places throughout this country, including the Department of Justice and the National Archives. He has done much work in the antitrust field in Sweden and serves as Consultant Economist to the Ad Hoc Committee on Restrictive Business Practices of the Economic and Social Council of the United Nations in New York.

1. For example, DIRLAM AND KAHN, FAIR COMPETITION; THE LAW AND ECONOMICS OF ANTITRUST POLICY (1954).